IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15881 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

V.R.JOSHI & CO. THROUGH PARTNER DHIRESH J JOSHI

Versus

GUJARAT STATE CO OP TRIBUNAL

Appearance:

1. Special Civil Application No. 15881 of 2003

MR BS PATEL for Petitioner No. 1

Ms. Archana Raval, AGP for Respondent No. 1

MR SHIRISH JOSHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/10/2004

ORAL JUDGEMENT

Rule. Shri Shirish Joshi, learned advocate appearing on behalf of respondent No.2 waives service of Rule and Ms. Archana Raval, learned AGP waives service of Rule on behalf of respondent No.1. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal dated 1.10.2003 in Revision Application No. 431 of 2003 in dismissing the said revision application and confirming the order passed by the Board of Nominees dated 17th September 2003 in Lavad Case No. 176 of 2003. Shri BS Patel, learned advocate appearing on behalf of the petitioner has submtited that being aggrieved and dissatisfied with the judgment and order passed by the Board of Nominees, Ahmedabad, dated 17th September 2003 in Lavad Case No. 176 of 2003 the petitioner had preferred a revision application before the Tribunal being Revision Application No. 431 of 2003. It appears from the record that the Board of Nominees passed an order on application for leave to defend on condition that the petitioner should deposit 33.5% of the suit amount. It is the case of the petitioner that in the said revision application the petitioner had preferred an application for stay and that while considering the application for stay the Tribunal has passed an order of dismissal of the revision application on merits.

3. It is the contention on behalf of the petitioner that while hearing the stay application the Tribunal ought not and could not have dismissed the revision application. It also appears that the Tribunal has not entertained the revision application at the preliminary hearing. It is the case of the petitioner that the revision application was in fact already admitted and the stay application was being heard by the Tribunal. The aforesaid factum is not denied by the learned advocate appearing on behalf of the respondent to the effect that in fact the application for stay was being heard and not the question with regard to preliminary hearing of the matter and not entertaining the matter at the preliminary stage. In that view of the matter the impugned order dated 1.10.2003 passed by the Tribunal in Revision Application No. 431 of 2003 in not entertaining the said revision application is hereby quashed and set aside. The Tribunal is directed to decide and dispose of the revision application No. 431 of 2003 on merits. It will be open for the Tribunal to hear the matter at preliminary stage and pass an appropriate order considering Regulation 12 of Gujarat State Cooperative Regulations. The Tribunal is directed to pass an appropriate order after giving opportunity of hearing to all the concerned parties within 2 months from the date of receipt of this order. It will be open for the

petitioner to move an appropriate application for stay before the Tribunal afresh within a period of 10 days from today and on such application being made the Tribunal is directed to consider the same in accordance with law and on merits within a period of 15 days thereafter without in any way being influenced by the fact that this Court has granted stay and has continued the same and also without in any way being influenced by its earlier order. Until then the interim relief granted by this Court is directed to be continued. However, it is made clear that this Court has not gone into the merits of the case.

4. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]